

EXHIBIT 10
Excerpts from
John McGrath
Deposition, Vol. I,
12/27/17

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * * * *

ESTATE OF TASHI S. FARMER
a/k/a TASHII FARMER a/k/a
TASHII BROWN, by and through
its Special Administrator,
Elia Del Carmen
Solano-Patricio; TAMARA
BAYLEE KUUMEALI'MAKAMAE
FARMER DUARTE, a minor,
individually and as
Successor-in-Interest, by and
through her legal guardian,
Stevandra Lk Kuanoni; ELIAS
BAY KAIMIPONO DUARTE, a
minor, individually and as
Successor-in-Interest, by and
through his legal guardian,
Stevandra Lk Kuanoni,

Plaintiffs,

Case No. 2:17-CV-01946-
JCM-PAL

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, a political
subdivision of the State of
Nevada; OFFICER KENNETH
LOPERA, individually and in
his Official Capacity; and
Does 1 through 50, inclusive,

Defendants.

VIDEOTAPED DEPOSITION OF CHIEF JOHN MCGRATH

Las Vegas, Nevada

December 27, 2017

Reported by: Kimberly A. Farkas, RPR, CCR #741

CHIEF JOHN MCGRATH

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<p style="text-align: right;">Page 10</p> <p>1 Q. If you don't understand a question that</p> <p>2 I've asked you, please don't answer it. Ask me to</p> <p>3 repeat it or rephrase it or in some way indicate</p> <p>4 it wasn't understood, and I'll do my best to</p> <p>5 rephrase it. If you answer a question, I'm going</p> <p>6 to assume that you've understood it.</p> <p>7 Is that fair enough?</p> <p>8 A. Sure.</p> <p>9 Q. Please wait until I finish my question</p> <p>10 before you start your answer, and I'll give you</p> <p>11 the same courtesy. I'll wait until you've</p> <p>12 finished your answer before I start my next</p> <p>13 question.</p> <p>14 Other than simply being courteous, it's</p> <p>15 difficult for the court reporter to take down two</p> <p>16 people who are speaking at the same time.</p> <p>17 Do you understand?</p> <p>18 A. Yes.</p> <p>19 Q. During the course of the deposition,</p> <p>20 please continue to answer out loud as you've been</p> <p>21 doing up until now. Such common expressions as</p> <p>22 "uh-huh," "huh-uh," nods of the head or shakes of</p> <p>23 the head are too difficult to interpret for the</p> <p>24 court reporter.</p> <p>25 Will you do that, please?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. Yes.</p> <p>2 Q. Are you under any kind of medication</p> <p>3 that would prevent you from giving your best</p> <p>4 response here today, either by way of affecting</p> <p>5 your memory or your ability to articulate?</p> <p>6 A. No medication.</p> <p>7 Q. Okay. You may or may not have answers</p> <p>8 to some of the questions that I ask having to do</p> <p>9 with time or distance, but you may have an</p> <p>10 estimate. And I'm entitled to your best estimate.</p> <p>11 Do you understand that?</p> <p>12 A. Sure.</p> <p>13 Q. But not a guess. If it's a guess, I'm</p> <p>14 not entitled to that.</p> <p>15 The difference between a guess and an</p> <p>16 estimate is not always clear. But if I asked you</p> <p>17 to estimate the length of this table, given your</p> <p>18 life experience with feet and inches or meters and</p> <p>19 centimeters and the fact that you can see the</p> <p>20 table, you could give me a reasonable estimate of</p> <p>21 the length of the table.</p> <p>22 If I asked you to estimate the length of</p> <p>23 my dining room table in Irvine, California, it</p> <p>24 would have to be a pure guess because you've never</p> <p>25 been there.</p>
<p style="text-align: right;">Page 12</p> <p>1 Do you understand?</p> <p>2 A. Yes.</p> <p>3 Q. All right.</p> <p>4 Okay. Chief -- is "Chief" the proper --</p> <p>5 A. Sure.</p> <p>6 Q. All right. Okay. Can you tell us,</p> <p>7 please, about the various level of policing that</p> <p>8 you've come through since you've been a member of</p> <p>9 the Las Vegas Metropolitan Police Department.</p> <p>10 A. Sure. I worked as a patrol officer, as</p> <p>11 a field training officer, as a sergeant in patrol,</p> <p>12 in problem-solving unit, in property crimes, and</p> <p>13 in auto theft, and in Viper, which is an auto</p> <p>14 theft task force.</p> <p>15 As a lieutenant, I worked, again, in</p> <p>16 patrol and in field training and in the gang unit.</p> <p>17 As a captain, I worked at Northwest Area Command,</p> <p>18 internal affairs, organizational -- excuse me --</p> <p>19 Organized Crime Bureau and Office of Internal</p> <p>20 Oversight. Then I was promoted to deputy chief in</p> <p>21 March of 2017.</p> <p>22 Q. What is internal oversight?</p> <p>23 A. Internal Oversight and Constitutional</p> <p>24 Policing is a bureau that investigates officer's</p> <p>25 use of force in critical incidents.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Is that -- is FIT under that?</p> <p>2 A. Yes.</p> <p>3 Q. What was your -- what were your</p> <p>4 responsibilities in charge of internal oversight?</p> <p>5 A. I was there for three months before I</p> <p>6 got promoted. The captain of that bureau was</p> <p>7 responsible for the reports that are generated to</p> <p>8 review them, either by the CIRT detectives or the</p> <p>9 FIT detectives.</p> <p>10 When an incident happens, you respond to</p> <p>11 the scene, get a general overview of what</p> <p>12 happened, and usually give both a public</p> <p>13 information statement to the media and an internal</p> <p>14 statement for the department.</p> <p>15 Q. You said that while you were in patrol</p> <p>16 as a sergeant, you were involved with problem</p> <p>17 solving.</p> <p>18 What did that mean?</p> <p>19 A. That's a plainclothes assignment of</p> <p>20 detectives basically assigned to patrol who</p> <p>21 respond to whatever the captain asked them to do</p> <p>22 is a problem at that time.</p> <p>23 Q. Okay. What are your responsibilities as</p> <p>24 deputy chief?</p> <p>25 A. So I supervise three bureaus and the</p>

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<p style="text-align: right;">Page 14</p> <p>1 bureau commanders that are under them, and I have 2 a responsibility for each of those sections. So 3 Organizational Development Bureau includes the 4 academy, field training, CIT, which is Critical 5 Intervention Team. And the other part of training 6 is firearms, drivers training, reality-based 7 training, advanced officer skill training. And I 8 might be forgetting something, but that's 9 organizational development. 10 Secondly, I have human resources, which 11 includes the hiring of people and the background 12 investigations and the -- we also do the 13 terminations or the out-processing of employees. 14 Lastly, I have project management in 15 Video Bureau. That includes quality assurance, 16 video. Body cameras, we call it. We call it 17 Video Bureau, but it's really just body cameras. 18 Policy and research and project management. 19 Q. What is intervention -- what does the 20 interventional team do? 21 A. Those are officers that train the rest 22 of the department in dealing with mentally 23 challenged persons or emotionally disturbed 24 persons. They also, at times, respond to 25 residences to check on people that we've come into</p>	<p style="text-align: right;">Page 15</p> <p>1 contact with to try to get them assistance. 2 Q. There was a deponent before you today, 3 Officer Crumrine, who went through -- I guess it's 4 a -- you call it a review board. I presume -- 5 A. Yes. 6 Q. -- it is a board of rights. 7 Is that something that is under your 8 jurisdiction? 9 A. So, yes, I'm on the -- I'm on the use of 10 force board -- 11 Q. Okay. 12 A. -- which includes use of force and the 13 tactical review board. I actually had one this 14 morning. 15 Q. Okay. 16 A. But I was also on Lopera board, which 17 included then Sergeant Crumrine. 18 Q. Okay. When you say "Lopera board," you 19 mean -- is that a generic statement about the 20 incident? 21 A. That's just the -- the use of force 22 board, although it's called an -- it has an event 23 number to it. Usually we commonly refer to it by 24 the name of the officer who is going in front of 25 the board.</p>
<p style="text-align: right;">Page 16</p> <p>1 Q. Did Lopera go through a -- some type of 2 administrative review? 3 A. No. Wait. I guess. He showed up at 4 the board and then refused to talk. So I don't 5 know what you would call that. 6 Q. Did you enter any kind of findings 7 regarding Officer Lopera as a board? 8 A. I didn't come to a finding, but there 9 was a finding. He was sustained for refusing to 10 cooperate. I'm not sure the exact wording for -- 11 I don't know. I think it was insubordination. 12 I'm not sure. But he didn't cooperate with the 13 board, which is a violation of policy. He's 14 required, in an administrative hearing, to 15 cooperate. 16 Q. Notwithstanding his Fifth Amendment 17 privileges in an administrative -- 18 A. Well, the criminal charges were still 19 pending, which is why, on the basis of his legal 20 team, told him don't talk to us. 21 Q. Okay. What charges were levied against 22 Officer Lopera as a part of the administrative 23 review? 24 A. I'm not sure. 25 Q. Okay. Who would have a copy or a</p>	<p style="text-align: right;">Page 17</p> <p>1 listing of the charges that were levied against 2 him for the administrative? 3 A. I would say that labor relations would 4 have that. 5 Q. Labor relations? 6 A. It's another section within the 7 department. 8 Q. Is there a custodian of labor relations? 9 A. There's a director. 10 Q. Director. Okay. 11 A. Jamie Frost. 12 Q. Say the name again, please. 13 A. Jamie, J-A-M-I-E, Frost. 14 Q. F-R-O-S-T? 15 A. Yes. 16 Q. Okay. 17 A. I'm sure she'll be happy I brought her 18 name up. 19 Q. I'm sure she will. And when I subpoena 20 here, I'll tell her this is from Chief McGrath. 21 A. No, no, no. Please don't. 22 Q. No. I just want to get the -- 23 A. No, I understand. I'm just kidding. 24 Q. All right. Now, there was also an 25 administrative review for Officer -- or I guess</p>

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<p style="text-align: right;">Page 18</p> <p>1 then Sergeant, Crumrine?</p> <p>2 A. Uh-huh. I'm sorry. Yes.</p> <p>3 Q. And you sat on that board?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Who else was on the board?</p> <p>6 A. I know assistant sheriff -- no. Well, I</p> <p>7 can't remember. Because I'm on all the boards,</p> <p>8 but sometimes the assistant sheriffs are on some</p> <p>9 and not other ones. I think it was Tim Kelly, but</p> <p>10 I'm not a hundred percent.</p> <p>11 Q. Okay. Where would I find a listing of</p> <p>12 the officers or participants in the review board</p> <p>13 for Officer Crumrine?</p> <p>14 A. I'm not sure. I know that Assistant</p> <p>15 Sheriff Kelly, whoever the board chairman was,</p> <p>16 does a memo to the Sheriff, saying what happened</p> <p>17 at the board. And then if there is -- if there --</p> <p>18 it involves discipline, that will be included on</p> <p>19 an adjudication of complaint, which labor</p> <p>20 relations will have.</p> <p>21 Q. All right. Was Assistant Sheriff Kelly</p> <p>22 the board chairman of that board?</p> <p>23 A. I think so, but I've had a lot of boards</p> <p>24 since then.</p> <p>25 Q. Yeah. You were not?</p>	<p style="text-align: right;">Page 19</p> <p>1 A. Oh, I was on the board.</p> <p>2 Q. No, but you were not the board chairman?</p> <p>3 A. No, I was not the chairman, no.</p> <p>4 Q. All right. Who would have -- where</p> <p>5 would there be a depository that would have a</p> <p>6 listing of his memo or whatever the findings were?</p> <p>7 A. I guess either he would have it or he</p> <p>8 would go to the office of the Sheriff.</p> <p>9 Now, I guess that when you're talking</p> <p>10 about Crumrine, it probably is a memo for</p> <p>11 non-confirmation because he was on probation. So</p> <p>12 it's not actually discipline. We just, while he's</p> <p>13 on probation as a sergeant, recommended that he</p> <p>14 doesn't continue as a supervisor. Doesn't have to</p> <p>15 be actual suspension or hours or anything like</p> <p>16 that.</p> <p>17 Q. No, I understand. But the very fact</p> <p>18 that he was not confirmed is, in itself, a</p> <p>19 demotion of sorts.</p> <p>20 A. Yes, but --</p> <p>21 Q. I understand.</p> <p>22 A. Okay.</p> <p>23 Q. He was on probation?</p> <p>24 A. Yes.</p> <p>25 Q. He was still in his probationary period</p>
<p style="text-align: right;">Page 20</p> <p>1 as a sergeant?</p> <p>2 A. Right.</p> <p>3 Q. There was a -- there was a determination</p> <p>4 of non -- noncompliance -- whatever the word is.</p> <p>5 A. Yes. Nonconfirmation.</p> <p>6 Q. Nonconfirmation.</p> <p>7 A. Right.</p> <p>8 Q. So he no longer continued as --</p> <p>9 A. He goes back as an officer.</p> <p>10 Q. So now he's a patrolman; correct?</p> <p>11 A. Correct.</p> <p>12 Q. Do you remember the charges that were</p> <p>13 levied against him?</p> <p>14 A. I don't know that there was any charges.</p> <p>15 There was some findings. I just can't recall what</p> <p>16 exactly the findings were.</p> <p>17 Q. Okay. Now, again, the findings would be</p> <p>18 with Assistant Sheriff Kelly?</p> <p>19 A. Well, the findings would be in OIO.</p> <p>20 It's -- it's a whole administrative report that</p> <p>21 they would do, and the findings are in there.</p> <p>22 Q. What does "OIO" mean?</p> <p>23 A. Office of Internal Oversight.</p> <p>24 Q. Okay. Which is -- was under your</p> <p>25 supervision?</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Yes.</p> <p>2 MR. DARWISH: Someone is trying to come</p> <p>3 in.</p> <p>4 MS. SOLANO-PATRICIO: Sorry. Hi, guys.</p> <p>5 I'm sorry to interrupt. Sorry I'm late.</p> <p>6 THE VIDEOGRAPHER: Oh, you're -- okay.</p> <p>7 MS. SOLANO-PATRICIO: Plaintiff.</p> <p>8 THE VIDEOGRAPHER: Could you state your</p> <p>9 name for the record.</p> <p>10 MS. SOLANO-PATRICIO: I'll spell it for</p> <p>11 you. It's very long. Elia Del Carmen</p> <p>12 Solano-Patricio.</p> <p>13 MR. ANDERSON: You weren't kidding.</p> <p>14 MR. SAYRE: Okay. Are we set?</p> <p>15 BY MR. SAYRE:</p> <p>16 Q. Okay. So you said that the findings</p> <p>17 would be with the Office of Internal Oversight.</p> <p>18 What I'm trying to do is figure out who</p> <p>19 I need to subpoena in order to produce the</p> <p>20 findings. In most organizations or departments,</p> <p>21 it would be a custodian of record, but if not, is</p> <p>22 it some other person?</p> <p>23 A. We don't -- we don't have a custodian of</p> <p>24 record for the department.</p> <p>25 Q. Okay.</p>

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<p style="text-align: right;">Page 22</p> <p>1 A. Usually the subpoenas would go directly 2 to legal, and they would usually get that for you. 3 Q. That young lady over there; right? 4 A. Yes. 5 Q. All right. So who is in charge of the 6 Office of Internal Oversight? 7 A. It was Kelly McMahon. And now, two 8 weeks ago, she was transferred out and a new 9 captain is there. His name is Chris Little. 10 Q. Captain Chris Little. 11 And Kelly -- could you spell her last 12 name, please. 13 A. McMahon, M-C-M-A-H-I-L-L. 14 Q. And what was her rank? 15 A. Captain. 16 Q. Okay. But currently, it would be 17 Captain Little? 18 A. Yes. 19 Q. Okay. I'll tell him the subpoena came 20 from you also. 21 A. That's okay. I don't care if he's mad 22 at me. 23 Q. Okay. All right, then. 24 You don't recall what determination was 25 made in the administrative review of</p>	<p style="text-align: right;">Page 23</p> <p>1 Officer Crumrine other than non -- 2 nonconfirmation? 3 A. Yeah. No, I don't -- I don't recall the 4 exact findings. I mean, the binder for that case 5 was a few hundred pages long. 6 Q. Okay. Was there an administrative 7 review for Officer Tran? 8 A. I -- I can't recall who was part of the 9 tactical review board. So how it works is the 10 officer who has the use of force, which was Lopera 11 in this case -- 12 Q. Yeah. 13 A. -- only participates in the use of force 14 board. Then we -- we have a -- basically, a vote 15 of whether -- whether the use of force was 16 justified or not. 17 Then we move into the tactical review 18 board. And everybody who was part of that 19 incident that they have findings about are 20 included in the tactical review board. And I -- I 21 think there was a couple of other officers there. 22 I can't recall their names. 23 Q. All right. Well, there were two 24 other -- two other officers that, at least, I'm 25 aware of were involved.</p>
<p style="text-align: right;">Page 24</p> <p>1 A. Uh-huh. Tran. 2 Q. Officer Tran and Officer Flores. 3 A. Okay. 4 Q. Do you recall if there was a review of 5 their actions? 6 A. Well, there was a review. I just don't 7 recall what the review was. 8 Q. Did the board make a determination as to 9 whether or not the force utilized by 10 Officer Lopera was justified? 11 A. See, I'm not -- I don't know what the 12 memo that the Sheriff -- Sheriff Kelly, who I 13 believe is -- wrote it, I don't know what that 14 said, and I can't recall. I wish I would have 15 reviewed this case. 16 Q. Sure. 17 Has Officer Lopera been separated from 18 the department? 19 A. Oh, yes. 20 Q. When did that occur? 21 A. I don't recall the date. 22 Q. Was he separated because of this 23 incident? 24 A. Yes. 25 Q. Because of his use of force?</p>	<p style="text-align: right;">Page 25</p> <p>1 A. And noncooperation with the board. 2 Q. Metropolitan Police Department teaches 3 and instructs its officers that they have a duty 4 to intervene when another officer is engaged in 5 excessive force; is that true? 6 A. Yes. 7 Q. And what is the intervention supposed to 8 consist of? 9 A. Stopping inappropriate use of force 10 by -- actually, verbally or physically, if it 11 needs be. 12 Q. Okay. Let me show you the police 13 report. 14 Have you reviewed the police report of 15 this incident? It was actually called an arrest 16 report. 17 A. No, I have not. 18 Q. Okay. Let me draw your attention over 19 to page 5 of 8. You're welcome to look at the 20 rest of it, too, but I'm only right now going to 21 ask you about 5 of -- 5 of 8. 22 Look at 2:58. And I'll represent to you 23 that that means 2 minutes and 58 seconds after 24 Officer Lopera's body camera was turned on. 25 Do you have that in mind?</p>

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<p style="text-align: right;">Page 26</p> <p>1 A. Yes.</p> <p>2 Q. Okay. It says, "Officer Lopera appeared</p> <p>3 to put Farmer in some type of neck restraint."</p> <p>4 Now, let me further represent to you</p> <p>5 that this is a timeline and report that was</p> <p>6 created by the officers listed in the arrest</p> <p>7 report. You can look at their names at the</p> <p>8 beginning of the arrest report. It's apparently</p> <p>9 Detective Alsup and Detective Colon.</p> <p>10 A. Right. From FIT.</p> <p>11 Q. Yes. Do you know those gentlemen?</p> <p>12 A. Yes.</p> <p>13 Q. All right. And have you interacted with</p> <p>14 them in the past?</p> <p>15 A. Yes.</p> <p>16 Q. It also says that this was approved by</p> <p>17 Sergeant McDonald.</p> <p>18 A. Yes.</p> <p>19 Q. Also of FIT?</p> <p>20 A. A FIT sergeant.</p> <p>21 Q. Right. And have you had experience of</p> <p>22 working with Sergeant McDonald?</p> <p>23 A. Yes.</p> <p>24 Q. And have you found the work of these</p> <p>25 detectives and Sergeant McDonald to be excellent</p>	<p style="text-align: right;">Page 27</p> <p>1 in the past?</p> <p>2 A. Yes.</p> <p>3 Q. Have you ever had any criticism of them?</p> <p>4 A. Well, "criticism" is kind of broad.</p> <p>5 So occasionally there have been reports</p> <p>6 that I've reviewed that have been sent back for</p> <p>7 revisions, but I -- I wouldn't call that a real</p> <p>8 criticism, where it was affecting their job</p> <p>9 performance.</p> <p>10 Q. I understand. All right. Look at 2:58</p> <p>11 again. It says, "Lopera appeared to put Farmer in</p> <p>12 some type of neck restraint."</p> <p>13 Okay. Then at 3:01, three seconds</p> <p>14 later, "Sergeant Crumrine arrived and stated, 'Put</p> <p>15 your fucking hands behind your back.'"</p> <p>16 Okay. You see that? Is that a "yes"?</p> <p>17 A. Yes. I'm sorry.</p> <p>18 Q. No problem.</p> <p>19 All right. Then look at 3:25. It says,</p> <p>20 "Officer Tran arrived and said, 'Let him go,</p> <p>21 Ken.'"</p> <p>22 You see that?</p> <p>23 A. Yes.</p> <p>24 Q. All right. Now, let me represent to you</p> <p>25 that Officer Crumrine has indicated that that was</p>
<p style="text-align: right;">Page 28</p> <p>1 actually him that said, "Let him go, Ken." It was</p> <p>2 not Officer Tran.</p> <p>3 Do you have that in mind?</p> <p>4 A. Yes, I have it in mind.</p> <p>5 Q. Okay. Now, Officer Crumrine also stated</p> <p>6 that sometime before that, between 2:58 and 3:25,</p> <p>7 he had previously stated to Officer Lopera, "Let</p> <p>8 him go, Ken."</p> <p>9 So this would have been the second time</p> <p>10 he told him, "Let him go, Ken."</p> <p>11 A. Okay.</p> <p>12 Q. Okay?</p> <p>13 Now, following the timeline, after 3:25,</p> <p>14 Officer Lopera continued to maintain the hold and</p> <p>15 didn't release it until 4:11, which is another 46</p> <p>16 seconds.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Now, after 3:25, I'm going</p> <p>20 to ask -- give you essentially a hypothetical.</p> <p>21 A sergeant of an officer tells his</p> <p>22 officer to release a hold, twice. Does that</p> <p>23 sergeant have a duty thereafter, having asked him</p> <p>24 twice to release the hold, to check and make sure</p> <p>25 he's released the hold?</p>	<p style="text-align: right;">Page 29</p> <p>1 MR. ANDERSON: Objection. Form.</p> <p>2 Go ahead. Go ahead and answer.</p> <p>3 THE WITNESS: Yes. That's what a duty</p> <p>4 to intervene is.</p> <p>5 BY MR. SAYRE:</p> <p>6 Q. Right. And if he fails to intervene, to</p> <p>7 check to see if he's released the hold after he's</p> <p>8 told him twice to release the hold, is that a</p> <p>9 violation of Metropolitan policy?</p> <p>10 MR. ANDERSON: Objection. Form.</p> <p>11 Answer.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. SAYRE:</p> <p>14 Q. And as you understand it, is it also a</p> <p>15 violation of the Fourth Amendment of the</p> <p>16 Constitution of the United States?</p> <p>17 MR. ANDERSON: Objection. Form.</p> <p>18 MR. McNUTT: Objection. Form.</p> <p>19 BY MR. SAYRE:</p> <p>20 Q. Failing to intervene when there's</p> <p>21 excessive force.</p> <p>22 A. Well, it's -- it's hard to say whether</p> <p>23 there is excessive force. I know now that there</p> <p>24 was excessive force, but I don't think Sergeant</p> <p>25 Crumrine believed at the time there was excessive</p>

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<p style="text-align: right;">Page 30</p> <p>1 force.</p> <p>2 Q. Well, I'll tell you that what</p> <p>3 Officer Crumrine testified to is he never again,</p> <p>4 until 4:11, looked to see if the hold had been</p> <p>5 released, having told him twice.</p> <p>6 MR. McNUTT: Objection. Form.</p> <p>7 Misstates testimony.</p> <p>8 MR. ANDERSON: Join.</p> <p>9 BY MR. SAYRE:</p> <p>10 Q. I'm representing to you that's what he</p> <p>11 testified, that he did not look to see if the hold</p> <p>12 had been released after he had told him twice to</p> <p>13 release it, because he trusted that he would</p> <p>14 release the hold.</p> <p>15 MR. McNUTT: Same objection.</p> <p>16 THE WITNESS: So if you're saying to me</p> <p>17 that he asked him to release the hold and he</p> <p>18 didn't do it and he didn't follow through on that?</p> <p>19 BY MR. SAYRE:</p> <p>20 Q. That's right.</p> <p>21 A. That's -- that's -- he should have</p> <p>22 followed through.</p> <p>23 Q. And following through -- failing to</p> <p>24 follow through is a failure to intervene?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. And failure to intervene, besides being</p> <p>2 a violation of Metropolitan policy, is a violation</p> <p>3 of the Fourth Amendment of the Constitution?</p> <p>4 MR. ANDERSON: Objection. Form.</p> <p>5 MR. McNUTT: Objection. Form.</p> <p>6 THE WITNESS: So I -- I think that</p> <p>7 you're -- I -- he would have to know that the</p> <p>8 force was excessive and then not intervene and</p> <p>9 allow it to happen.</p> <p>10 BY MR. SAYRE:</p> <p>11 Q. All right.</p> <p>12 A. I -- I don't think that's what he did.</p> <p>13 I know that's what he -- he didn't intervene, but</p> <p>14 I don't think it was because -- he just didn't</p> <p>15 know that that's what he was supposed to do.</p> <p>16 Q. Okay. He didn't know that's what he was</p> <p>17 supposed to do because he hadn't been trained to</p> <p>18 do that?</p> <p>19 MR. McNUTT: Objection to form.</p> <p>20 MR. ANDERSON: Objection.</p> <p>21 THE WITNESS: Okay. I -- no, I don't</p> <p>22 think that's why. I think he didn't understand</p> <p>23 his job as a supervisor.</p> <p>24 BY MR. SAYRE:</p> <p>25 Q. Okay. And he didn't understand his job</p>
<p style="text-align: right;">Page 32</p> <p>1 as a -- why do you say that?</p> <p>2 A. Because he's the one that should have</p> <p>3 the most experience and be the most objective in</p> <p>4 that situation and should have -- if he didn't</p> <p>5 make sure something happened, then he should have</p> <p>6 made sure someone else made it happen.</p> <p>7 Q. Okay. What do you mean, make sure</p> <p>8 someone else made it happen?</p> <p>9 A. Tell someone else to pull him off.</p> <p>10 Q. Right. Physically pull his hands away</p> <p>11 from the neck?</p> <p>12 A. Or direct somebody else to pull his</p> <p>13 hands off.</p> <p>14 Q. All right. And why didn't he understand</p> <p>15 that that was his duty?</p> <p>16 MR. ANDERSON: Objection. Form.</p> <p>17 THE WITNESS: Because he didn't</p> <p>18 understand his role as a supervisor.</p> <p>19 BY MR. SAYRE:</p> <p>20 Q. And why didn't he understand his role as</p> <p>21 a supervisor?</p> <p>22 A. Well, I think that being a supervisor</p> <p>23 isn't for everybody. You have to remove yourself</p> <p>24 as your previous role as an officer and be able to</p> <p>25 go to the next role, and it's not an easy</p>	<p style="text-align: right;">Page 33</p> <p>1 transition and not everyone can do it. And he was</p> <p>2 acting as one of the guys instead of being a</p> <p>3 sergeant.</p> <p>4 Q. All right. By that, you mean he wanted</p> <p>5 to get along with his men, so he didn't intervene?</p> <p>6 MR. ANDERSON: Objection. Form.</p> <p>7 THE WITNESS: And sometimes that's --</p> <p>8 that could be the problem --</p> <p>9 BY MR. SAYRE:</p> <p>10 Q. Right.</p> <p>11 A. -- that he was trying to get along with</p> <p>12 his guys.</p> <p>13 Q. Right.</p> <p>14 A. Or sometimes he just doesn't understand</p> <p>15 that is his job.</p> <p>16 Q. All right. He failed in his duty as a</p> <p>17 supervising officer that -- that day; correct?</p> <p>18 MR. ANDERSON: Objection. Form.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. SAYRE:</p> <p>21 Q. Okay. He failed to prevent</p> <p>22 Officer Lopera from exercising excessive force on</p> <p>23 Mr. Farmer; correct?</p> <p>24 MR. McNUTT: Objection. Form.</p> <p>25 MR. ANDERSON: Join.</p>

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<p style="text-align: right;">Page 34</p> <p>1 THE WITNESS: So I think the -- a lot of</p> <p>2 the use of the force was started well before</p> <p>3 Officer Crumrine got there.</p> <p>4 BY MR. SAYRE:</p> <p>5 Q. Right.</p> <p>6 A. So he got there in the middle. I'm just</p> <p>7 estimating there, but all I can say is he should</p> <p>8 have done more.</p> <p>9 Q. All right. You've seen the video;</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. Both the body camera of Lopera, as well</p> <p>13 as the Venetian security film?</p> <p>14 A. That's correct.</p> <p>15 Q. And are you aware that Officer Lopera</p> <p>16 tased Mr. Farmer seven times?</p> <p>17 A. Yes.</p> <p>18 Q. And that's outside of policy; correct?</p> <p>19 MR. McNUTT: Objection. Form.</p> <p>20 THE WITNESS: Policy states, I believe,</p> <p>21 you can only tase someone three times.</p> <p>22 BY MR. SAYRE:</p> <p>23 Q. Right. So it would be a violation of</p> <p>24 policy?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. Which means it's unreasonable behavior?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Now, did you see Officer Lopera</p> <p>4 strike Mr. Farmer on the head 10 to 12 times?</p> <p>5 A. I saw the video, and it was difficult to</p> <p>6 tell how many times he struck him, but he</p> <p>7 definitely struck him a lot.</p> <p>8 Q. Was it outside of policy to strike</p> <p>9 Mr. Farmer on the head or about the head?</p> <p>10 A. It's not outside of policy to strike</p> <p>11 someone on the head. It's -- what was outside of</p> <p>12 policy is the combination of tasing, striking in</p> <p>13 the head, LVNR.</p> <p>14 Q. Okay. So the entire administration of</p> <p>15 force as a whole, including taser, striking, and</p> <p>16 the lateral vascular neck restraint, were</p> <p>17 excessive force?</p> <p>18 A. Based on the reason for the stop, which</p> <p>19 was not justified.</p> <p>20 Q. Right. In fact, the stop was a</p> <p>21 consensual stop, wasn't it?</p> <p>22 A. We all know that it was a consensual</p> <p>23 stop, but Officer Lopera didn't think it was a</p> <p>24 consensual stop.</p> <p>25 Q. And why do you say that?</p>
<p style="text-align: right;">Page 36</p> <p>1 A. Because he didn't have a reason to stop</p> <p>2 him.</p> <p>3 Q. Right. He had no reason to pursue him</p> <p>4 and start tasing him; correct?</p> <p>5 A. Well, pursuing him is not a stop or</p> <p>6 unreasonable. What happens when you catch someone</p> <p>7 is what force can you use based on what crime they</p> <p>8 committed.</p> <p>9 He didn't know what he had. I</p> <p>10 understand someone runs from the police, most</p> <p>11 police officers chase them.</p> <p>12 Q. When someone is stopped pursuant to a</p> <p>13 consensual stop, they're stopped without probable</p> <p>14 cause for an arrest; correct?</p> <p>15 A. That's correct.</p> <p>16 Q. That's the nature of a consensual stop?</p> <p>17 A. Right.</p> <p>18 Q. And in a consensual stop, a civilian who</p> <p>19 is stopped has a right to not talk to the officer?</p> <p>20 A. That's correct.</p> <p>21 Q. And, in fact, he has a right to just</p> <p>22 walk away from the officer?</p> <p>23 A. That's correct.</p> <p>24 Q. And by walking away, it does not raise</p> <p>25 the stop to a suspicion that should cause him to</p>	<p style="text-align: right;">Page 37</p> <p>1 be arrested?</p> <p>2 A. That's correct.</p> <p>3 Q. So in this situation, is it true that</p> <p>4 there was nothing that you saw on the tape that</p> <p>5 should have caused Officer Lopera to apprehend</p> <p>6 Mr. Farmer?</p> <p>7 MR. McNUTT: Objection. Form.</p> <p>8 THE WITNESS: I didn't see anything, if</p> <p>9 I was him, that I would stop him for.</p> <p>10 BY MR. SAYRE:</p> <p>11 Q. Right. And you didn't see any reason as</p> <p>12 to why he should tase him seven times?</p> <p>13 A. So now we're getting a little bit into</p> <p>14 after you make the decision to use force, which I</p> <p>15 don't agree with, but he uses force, obviously,</p> <p>16 some of the tasers were -- strikes were</p> <p>17 ineffective.</p> <p>18 Q. Right.</p> <p>19 A. So at what point does it become</p> <p>20 excessive? You know, depending on whether or not</p> <p>21 the strikes are actually having an effect on him.</p> <p>22 Q. Well, isn't it correct the department</p> <p>23 teaches that after three cycles, you discontinue</p> <p>24 the use of a taser?</p> <p>25 A. And go to a different tool or way to</p>

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<p style="text-align: right;">Page 38</p> <p>1 apprehend the subject, yes.</p> <p>2 Q. Right. So to cycle seven times,</p> <p>3 including the last time for nine seconds, would be</p> <p>4 excessive force?</p> <p>5 A. Well, I think it was excessive, yes.</p> <p>6 Q. Did each of the officers, Tran and</p> <p>7 Flores, also have a duty to intervene to prevent</p> <p>8 Officer Lopera from engaging in excessive force?</p> <p>9 A. If they thought there was excessive</p> <p>10 force, yes.</p> <p>11 Q. If Sergeant -- then-Sergeant Crumrine</p> <p>12 had to tell Officer Lopera twice to "Let him go,</p> <p>13 Ken," let him go, release the hold, would</p> <p>14 Officer Crumrine have been justified in not</p> <p>15 checking thereafter as to whether he had actually</p> <p>16 released the hold?</p> <p>17 MR. ANDERSON: Objection. Form.</p> <p>18 THE WITNESS: I think I already answered</p> <p>19 that, but I think that he should have done more</p> <p>20 than just talk to him about it.</p> <p>21 BY MR. SAYRE:</p> <p>22 Q. Right. He should have actually either</p> <p>23 himself physically intervened or had someone else</p> <p>24 physically intervene to release the hold?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. Okay. Is it correct that the</p> <p>2 Metropolitan Police Department teaches that it</p> <p>3 generally takes 7 to 14 seconds to render a</p> <p>4 subject unconscious with the use of a lateral</p> <p>5 vascular neck restraint?</p> <p>6 A. I'm not -- I'm not familiar with how</p> <p>7 many seconds it takes. I think it's a lot less</p> <p>8 than that.</p> <p>9 Q. Okay. Is it correct that one of the</p> <p>10 biggest dangers in administering a lateral</p> <p>11 vascular neck restraint is to continue the hold</p> <p>12 after the subject falls unconscious?</p> <p>13 MR. McNUTT: I'm sorry. Could you</p> <p>14 restate the question, please.</p> <p>15 MR. SAYRE: Sure.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 MR. SAYRE: One of the -- it was my</p> <p>18 English. I'm still working on it.</p> <p>19 Q. One of the dangers in administering a</p> <p>20 lateral vascular neck restraint is to continue the</p> <p>21 hold after the subject falls unconscious?</p> <p>22 A. So I'm not familiar with what the</p> <p>23 dangers are, like, by definition, but I know that</p> <p>24 we train that when subjects are rendered</p> <p>25 unconscious, that you don't continue to hold.</p>
<p style="text-align: right;">Page 40</p> <p>1 BY MR. SAYRE:</p> <p>2 Q. Okay. Have you read any documents from</p> <p>3 Jim -- James Lindell?</p> <p>4 A. Possibly. Who's James Lindell?</p> <p>5 Q. Do you know -- okay.</p> <p>6 James Lindell is the father of the</p> <p>7 lateral vascular neck restraint, out of the Kansas</p> <p>8 City Police.</p> <p>9 A. Okay. So, no, I didn't read his --</p> <p>10 whatever he put out, but I am familiar with the</p> <p>11 department purchased that from him.</p> <p>12 Q. Okay. Take a look at what I've marked</p> <p>13 here as --</p> <p>14 MR. ANDERSON: I'm just going to put an</p> <p>15 objection that these were topics that</p> <p>16 Michael Bland was prepared to talk about. I did</p> <p>17 not produce this witness to talk about these</p> <p>18 topics.</p> <p>19 MR. SAYRE: Okay. Some of these were</p> <p>20 crossovers. I'm not --</p> <p>21 MR. ANDERSON: You're fine.</p> <p>22 MR. SAYRE: All right. Okay.</p> <p>23 THE WITNESS: People do a much better</p> <p>24 than me.</p> <p>25</p>	<p style="text-align: right;">Page 41</p> <p>1 BY MR. SAYRE:</p> <p>2 Q. Okay. All right. Would you take a</p> <p>3 look, please, down at the bottom of 0615.</p> <p>4 A. Yep.</p> <p>5 Q. That's the -- it says, "There are,</p> <p>6 however, three main dangers of neck restraint</p> <p>7 based upon the above experiments."</p> <p>8 Look at number 3 on the next page. "To</p> <p>9 continue the hold after the subject falls</p> <p>10 unconscious."</p> <p>11 A. Yes, I see it.</p> <p>12 Q. Okay. And then down below, on 0616,</p> <p>13 "The two greatest problems with police neck</p> <p>14 restraint" -- it's about a third of the way down</p> <p>15 the page.</p> <p>16 "The two greatest problems with police</p> <p>17 neck restraints are that officers are often not</p> <p>18 taught how to regulate control of the subject by</p> <p>19 the neck and when to stop compression on a</p> <p>20 subject's neck."</p> <p>21 Do you see those two?</p> <p>22 A. Yes.</p> <p>23 Q. What is the training of the Metropolitan</p> <p>24 Police Department regarding how to regulate</p> <p>25 control of a subject by the neck?</p>

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1 A. I'm not exactly sure how -- what the
2 training is now.
3 Q. Okay. And what is the training
4 regarding when to stop compression on a subject's
5 neck?
6 A. When the subject is rendered unconscious
7 or compliance.
8 Q. Okay. I'm going to ask you to assume
9 that for much of the hold, Mr. Farmer had his face
10 away from Officer Lopera, meaning Officer Lopera
11 was on his back, face up. Mr. Farmer was on his,
12 back face, up on top of Officer Lopera. In other
13 words, it was a backward hold.
14 A. Back-lying, we call it.
15 Q. Back-lying hold.
16 How -- what training does the department
17 give to its officers to determine if a person in
18 that position has gone unconscious?
19 A. Yeah, I can't actually answer the exact
20 training that we have. I'm sorry.
21 Q. All right.
22 A. I got promoted too high. We don't have
23 to do the LVNR.
24 Q. Now, take a look at 0617. Do you have
25 that?

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1 A. I believe so. And I read forward. I
2 think these are the requirements we have for the
3 department, but I can't testify for sure.
4 Q. Okay. By reading forward, you meant --
5 it next says, "The POST academy officer" --
6 A. Yes.
7 Q. -- "requires eight hours of training to
8 accomplish the same goals, and in-service training
9 should be mandated for four hours annually in
10 order for officers to retain the necessary skill
11 and agility to remain proficient in its use?"
12 A. I believe that's the standard, but, you
13 know, Officer Bland would be better to answer that
14 than me.
15 Q. Okay. Now, Officer Bland testified that
16 only two hours of training are provided on an
17 annual basis.
18 Did you know that?
19 A. I thought it was four hours, but --
20 Q. Should it be four hours?
21 A. I'm fine with two hours, but I would --
22 if we would make a change like that, it wouldn't
23 be my decision. It would be a group like this
24 deciding what -- how many hours training we need
25 and why we needed to change it from two to four or

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1 A. No.
2 Q. I'll give that to you.
3 A. I only have 5 and 6.
4 MR. McNUTT: Are we going to make these
5 exhibits or --
6 MR. SAYRE: We can if you'd like.
7 MR. McNUTT: I'm just asking.
8 MR. SAYRE: I wasn't planning to, but we
9 can. It's material that's been produced from me
10 and Bates stamped.
11 MR. McNUTT: No, I understand.
12 BY MR. SAYRE:
13 Q. All right. Take a look at the next to
14 the last paragraph.
15 MR. McNUTT: On 17; right?
16 MR. SAYRE: On 617, correct.
17 BY MR. SAYRE:
18 Q. "It has been determined by means of
19 extensive training in neck restraint field reports
20 that recruit officers require a minimum of 12
21 hours instruction, plus controlled competition to
22 make them confident and proficient in applying the
23 LVNR effectively and safely on subjects."
24 Is that provided by the Metropolitan
25 Police Department?

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1 from four to two.
2 Q. Do you know why James Lindell's
3 recommendations of four hours on an annual basis
4 have been cut in half by the Metropolitan Police
5 Department --
6 A. No, I don't.
7 Q. -- for several years?
8 A. No, I don't know why.
9 Q. Okay. Now, there has been a change in
10 policy involving the use of a lateral vascular
11 neck restraint by the Metropolitan Police
12 Department; correct?
13 A. Yes.
14 Q. All right. And when did that change
15 take place?
16 A. I believe the -- the change took place
17 in September of 2017.
18 Q. Sure. And why did it take place?
19 A. In the course of reviewing this
20 incident, the Office of Internal Oversight thought
21 that the use of force policy was not as easy to
22 understand for officers, and they wanted to
23 simplify it.
24 Q. Was that done by a board, or was it done
25 by an individual?

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<p style="text-align: right;">Page 46</p> <p>1 A. So I can talk in general how we change 2 policies and then specifically to the use of 3 force. 4 Q. Sure. 5 A. Most of the use of the force changes 6 are -- are based on review of critical incidents 7 or recommendations from other parts of the 8 department that want to change the use of force 9 policy. 10 They have a group that meets of training 11 experts and the detectives from OIO to discuss 12 what the problems are, what they want to -- what 13 they think the changes should be. And then 14 they -- they make those changes. And then it goes 15 out for a few different kinds of review. 16 Do you want me to keep going -- 17 Q. Yes, please. 18 A. -- and talk about how we change policy? 19 Q. Yes, please. 20 A. Okay. So this is more what I can talk 21 about versus the LVNR actual training. 22 So we have a system where, when you 23 recommend a policy change -- and it's a little 24 different for OIO because they do it so often, but 25 we make a lot of policy changes on the department.</p>	<p style="text-align: right;">Page 47</p> <p>1 But as you -- a bureau commander tries to change 2 policy, they write that up. It goes to policy and 3 research. They make the changes. They ask for 4 feedback. 5 So that goes out to all the bureau 6 commanders and their assistants, the chain of 7 command that recommended it, and they get feedback 8 on the changes. And that's a two-week review. 9 Then it goes back to that bureau 10 commander. He looks at the review, the feedback, 11 rather, of what everyone says about the policy 12 changes, and takes that into consideration before 13 the actual policy is changed. 14 And then it goes out for another review, 15 when the policy is done, to all the way up to the 16 undersheriff. 17 Q. Is this compiled in some type of 18 findings? 19 A. I'm not sure I understand what you mean. 20 Q. Sure. 21 This change presumably is a change that 22 would be embodied in writing? 23 A. Yes. 24 Q. All right. That's what I meant by 25 findings. Was there -- is there some type of a</p>
<p style="text-align: right;">Page 48</p> <p>1 writing that discusses the change and the reasons 2 for it? 3 A. Well, sometimes there isn't the reason, 4 and sometimes there is. But, at minimum, the 5 wording is struck out. So you would get the 6 policy draft. The line would be struck out of 7 what they're changing. And then the new wording 8 would be there, highlighted. 9 Q. What was the impetus for this particular 10 policy change? 11 A. The Sashi Farmer/Lopera [sic] case. 12 Q. Okay. His death? 13 A. Yes. 14 Q. Okay. Are you aware that the Henderson 15 Police Department doesn't permit any kind of neck 16 restraint? 17 A. I was not aware of that. But in the 18 process of changing this policy, we looked at 19 departments all across the country, who has 20 used -- who uses LVNR, who doesn't; if they 21 dropped it, why did they -- why did they stop 22 using it, before we decided to keep it in policy. 23 Q. Did -- were you aware or were you made 24 aware that the North Las Vegas Police Department 25 does not permit any -- allow any compressions in</p>	<p style="text-align: right;">Page 49</p> <p>1 the neck? 2 A. I don't recall that. 3 Q. Okay. Did you investigate why they 4 don't permit; that is, they being Henderson and 5 North Las Vegas? 6 A. No, I didn't. And I don't recall any 7 conversations about Henderson or North Las Vegas. 8 Q. Okay. Are you -- are you -- are you 9 aware that Henderson doesn't permit neck 10 restraints? 11 A. No, I was not aware of that. 12 Q. These are the records that have been 13 provided to me about the courses taken by Officer 14 Kenneth Lopera while he was a police officer. 15 Could you take a look at these. 16 There are -- now, first of all, the 17 training and education of officers was something 18 that you were in charge of at one time; correct? 19 A. Yes. 20 Q. Okay. And you were -- would have been 21 in charge of their curriculum? 22 A. Curriculum? I guess you could say I'm 23 in charge of it, but it's been set for several 24 years. 25 Q. Could you take a look at these. These</p>

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<p style="text-align: right;">Page 50</p> <p>1 are all -- it was 200-and-something courses that 2 are listed for Officer Lopera. And can you tell 3 me which, if any, of these provide -- I'm sorry. 4 I'm missing a page. I think this one goes with 5 it. 6 Which, if any, of these provide training 7 in lateral vascular neck restraint? 8 MR. ANDERSON: Before you answer that, 9 an objection that this was a topic that we 10 prepared Officer Michael Bland to talk about and 11 to testify on this issue. 12 MR. SAYRE: Okay. 13 MR. ANDERSON: You can go ahead and 14 answer. 15 THE WITNESS: I'm not -- I mean, do you 16 want me to go through here and find the LVNR 17 training? 18 BY MR. SAYRE: 19 Q. If there is any. I can't find any. 20 A. Well, I think it would be under 21 defensive tactics. 22 Q. Okay. 23 A. So, I mean, I'm just -- I'm looking at 24 this one page. It says "Defensive" -- I don't 25 know what page it is, but "Defensive Tactics</p>	<p style="text-align: right;">Page 51</p> <p>1 Fourth Quarter" -- 2 Q. What number is it? 3 A. It's on the back of 118. 4 Q. It should have a number of the class. 5 A. I'm sorry. 6 MR. ANDERSON: The number of the class. 7 THE WITNESS: Oh, the number of the 8 class. Number 19. 9 BY MR. SAYRE: 10 Q. Okay. And how long is that hour-wise? 11 A. Two hours. 12 So what happens is they have defensive 13 tactics, and then the -- what they're supposed to 14 cover in that time is sent out by training, and 15 one of them will be LVNR. Another one is 16 something else. 17 Q. Okay. 18 A. And I wouldn't -- this doesn't tell you 19 what specifically he was doing within that 20 defensive tactics training. 21 Q. Right. 22 A. Which is good because then I won't have 23 to try to look through all these. 24 Q. That was the only thing you were able to 25 identify?</p>
<p style="text-align: right;">Page 52</p> <p>1 A. Well, I'm sure it's all over these. 2 Defensive tactics is four times a year, two hours 3 a quarter, but -- so I would have to know when 4 they did LVNR training, what quarter to look for, 5 which I don't know. 6 Q. Was it because of the death of 7 Tashi Farmer that you started the process of 8 reconsidering whether or not you would use the 9 LVNR in the future and in what fashion? 10 A. Yes. 11 Q. All right. In 2003, a French national 12 by the name of Philippe LeMenn was asphyxiated 13 resulting from a neck restraint while being 14 subdued at the Clark County jail. 15 Do you recall that? 16 A. Vaguely. 17 Q. Why wasn't there initiated a change at 18 the time of the lateral vascular neck restraint? 19 MR. ANDERSON: Objection. Form. 20 THE WITNESS: Yeah, I don't -- I'm not 21 familiar enough with that case. I know that there 22 was other issues besides a neck restraint that was 23 applied to him. 24 BY MR. SAYRE: 25 Q. Okay. In 2006, robbery suspect</p>	<p style="text-align: right;">Page 53</p> <p>1 James Lewis, 37, died while police were attempting 2 a chokehold on Lewis while he was resisting 3 arrest. 4 Do you recall that incident? 5 A. No. 6 Q. 2009, Dustin James "DG" -- "DJ" Boone 7 died after three Las Vegas police officers took 8 him into custody using a neck restraint to subdue 9 him. 10 Do you remember that incident? 11 A. No. 12 Q. Do you know why something wasn't started 13 after those deaths to determine why a lateral 14 vascular neck restraint should be used or not? 15 A. I -- I don't know. Obviously, you know, 16 I wasn't in a position that I am now. But all I 17 know is when this was briefed, the Sheriff said, 18 we need to look into LVNR, and that's what we did. 19 Q. When you say "briefed," what do you mean 20 by that? 21 A. OIO gives a 72-hour brief to all command 22 staff on use of force incidents. And based on 23 that brief and the video, the Sheriff ordered a 24 review of the LVNR. 25 Q. Okay. What is meant by a "72-hour</p>

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<p style="text-align: right;">Page 54</p> <p>1 brief?"</p> <p>2 A. 72 hours after the incident, the</p> <p>3 assigned FIT detectives come in and give a brief</p> <p>4 of what they've determined, even though it was</p> <p>5 only 72 hours. And then they leave, and then CIRT</p> <p>6 does a brief of what they found, because both</p> <p>7 investigations are kept separate.</p> <p>8 And then after that, they leave and the</p> <p>9 Sheriff and staff discuss if there's any issues</p> <p>10 that we need to look at.</p> <p>11 Q. Okay. Is that brief in writing?</p> <p>12 A. There's a --</p> <p>13 Q. The 72-hour brief.</p> <p>14 A. No, there's no writing. It was quickly</p> <p>15 after it happened and not enough time to do</p> <p>16 reports.</p> <p>17 Q. So it's a presentation?</p> <p>18 A. It's -- yes. It's more of a</p> <p>19 presentation.</p> <p>20 Q. And did these two arresting officers,</p> <p>21 were they the ones that put on the presentation?</p> <p>22 A. I don't recall. But they would be --</p> <p>23 there would be a lead FIT detective that would do</p> <p>24 that part and a lead CIRT detective that would</p> <p>25 present that part for the CIRT.</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. Okay. And then it went through the</p> <p>2 process that you described, about whether there</p> <p>3 was going to be -- what is the change?</p> <p>4 A. What is the change in policy?</p> <p>5 Q. Yeah.</p> <p>6 A. LVNR was moved from low-level use of</p> <p>7 force to intermediate and -- whatever the next</p> <p>8 highest one is, deadly force.</p> <p>9 Q. Deadly force?</p> <p>10 A. And we had different levels of the LVNR,</p> <p>11 1, 2, and 3, and we took that out and just put all</p> <p>12 levels. You can move through the levels pretty</p> <p>13 quickly. So we wanted to make it easy for the</p> <p>14 officers to understand.</p> <p>15 And then the threshold for using the</p> <p>16 LVNR was moved up to the aggressive level. And</p> <p>17 that's the suspects had to have aggressive</p> <p>18 actions.</p> <p>19 Q. So all three levels of LVNR can be used</p> <p>20 either at the intermediate level or at the deadly</p> <p>21 force level?</p> <p>22 A. That's correct.</p> <p>23 Q. But not at the low level?</p> <p>24 A. Right.</p> <p>25 Q. Did you look at other police departments</p>
<p style="text-align: right;">Page 56</p> <p>1 that have that same policy, the change?</p> <p>2 A. I don't recall if they looked at the</p> <p>3 specific changes in the levels or the change --</p> <p>4 moving the -- where it is on the use of force</p> <p>5 chart. I would assume so, but I don't know for</p> <p>6 sure. That was the recommendation from OIO and</p> <p>7 from the trainers, and everyone basically agreed</p> <p>8 to it.</p> <p>9 Q. You are a Deputy Chief.</p> <p>10 How many Deputy Chiefs are there?</p> <p>11 A. I'd have to count them. Two in patrol.</p> <p>12 There's five police and one jail, corrections</p> <p>13 officer.</p> <p>14 Q. Okay. And then the next step up is the</p> <p>15 chief?</p> <p>16 A. Assistant Sheriff.</p> <p>17 Q. Assistant Sheriff. Okay.</p> <p>18 A. There's three Assistant Sheriffs.</p> <p>19 Q. You told me about Kelly; right?</p> <p>20 A. The other -- do you want the other two?</p> <p>21 Q. Please.</p> <p>22 A. Okay. Todd Fisulo, until New Year's,</p> <p>23 then he's retiring. And then it will be</p> <p>24 Charles Hank. And then the other one is</p> <p>25 Tom Roberts. And I don't know when he's leaving,</p>	<p style="text-align: right;">Page 57</p> <p>1 but he's leaving in two weeks.</p> <p>2 Q. All right. So then above Assistant</p> <p>3 Sheriff is the Sheriff; is that it?</p> <p>4 A. Undersheriff.</p> <p>5 Q. Undersheriff.</p> <p>6 A. And then the Sheriff.</p> <p>7 Q. Okay. Who is the Undersheriff?</p> <p>8 A. Kevin McMahon.</p> <p>9 Q. Another Irish guy. I was just wondering</p> <p>10 how many upper level guys were Irish.</p> <p>11 Okay. And then the Sheriff?</p> <p>12 A. And then the Sheriff.</p> <p>13 Q. What's his name?</p> <p>14 A. Joe Lombardo.</p> <p>15 MR. SAYRE: Okay. All right. Let's</p> <p>16 take a break. I may be done. I know Dan will</p> <p>17 have two more hours of questioning.</p> <p>18 THE VIDEOGRAPHER: We are off the record</p> <p>19 at 2:01 p.m.</p> <p>20 (Whereupon, a recess was taken.)</p> <p>21 THE VIDEOGRAPHER: Back on the record.</p> <p>22 The time is 2:06 p.m.</p> <p>23 BY MR. SAYRE:</p> <p>24 Q. Did you ever make a determination, in</p> <p>25 reviewing the evidence -- by "you" I mean the</p>

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<p style="text-align: right;">Page 58</p> <p>1 board, investigative body -- whether or not</p> <p>2 Officer Lopera was using a rear naked choke or</p> <p>3 lateral vascular neck restraint?</p> <p>4 A. That's not part of what the board would</p> <p>5 determine. I think that that is what it appeared</p> <p>6 on video, but it was hard to tell for sure.</p> <p>7 Q. I'm sorry. What is -- what appeared --</p> <p>8 A. It was hard -- it was hard to tell if he</p> <p>9 had a rear naked -- rear naked choke or an LVNR,</p> <p>10 to me, but I'm not an expert on that. I think we</p> <p>11 had people say that it was not per policy.</p> <p>12 MR. SAYRE: Okay. I have nothing</p> <p>13 further. Thanks. This gentleman is going to</p> <p>14 start yelling at you now.</p> <p>15 MR. McNUTT: Depends on your answers.</p> <p>16 EXAMINATION</p> <p>17 BY MR. McNUTT:</p> <p>18 Q. Chief, we met earlier. My name is</p> <p>19 Dan McNutt. I represent Ken Lopera.</p> <p>20 A. Uh-huh.</p> <p>21 Q. I just have a couple quick questions for</p> <p>22 you.</p> <p>23 With respect to your testimony versus</p> <p>24 Officer Bland's, or Sergeant Bland's -- first off,</p> <p>25 do you know Sergeant Bland?</p>	<p style="text-align: right;">Page 59</p> <p>1 A. Yes.</p> <p>2 Q. And what do you -- do you know that he</p> <p>3 has been designated as one of the individuals most</p> <p>4 knowledgeable or a 30(b)(6) witness on certain</p> <p>5 topics regarding use of force policy for Las Vegas</p> <p>6 Metropolitan Police Department?</p> <p>7 A. Yes. And he was the actual subject</p> <p>8 matter expert that we -- that I talked to to learn</p> <p>9 more about LVNR as it relates to use of force</p> <p>10 policy.</p> <p>11 Q. So would his testimony or your testimony</p> <p>12 about the actual technique that was employed in</p> <p>13 this incident, who would have the better, more</p> <p>14 technically correct answer?</p> <p>15 A. Sergeant Bland.</p> <p>16 Q. When you watched the video, you</p> <p>17 talked -- there was some discussion about the fist</p> <p>18 strikes that Mr. Lopera allegedly threw.</p> <p>19 Could you tell or do you know where they</p> <p>20 landed on Mr. Farmer?</p> <p>21 A. No. And that's sort of what I referred</p> <p>22 to, was the report said 10 to 12 strikes. And to</p> <p>23 me, "strike" infers hitting, not just throwing a</p> <p>24 punch. So it was difficult to determine exactly</p> <p>25 how many struck Mr. Farmer.</p>
<p style="text-align: right;">Page 60</p> <p>1 Q. Additionally, you don't know where they</p> <p>2 struck, if they struck; correct?</p> <p>3 A. No. A lot of the strikes were -- were</p> <p>4 obscured by the body movement and the angle of the</p> <p>5 camera.</p> <p>6 Q. You talked a little earlier about, you</p> <p>7 know, the fact -- concept of a consensual stop or</p> <p>8 reasonable suspicion.</p> <p>9 Do you remember that testimony?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know the circumstances under</p> <p>12 which Officers Lopera and Lif first encountered</p> <p>13 Mr. Farmer?</p> <p>14 A. Yes.</p> <p>15 Q. And what do you know about that</p> <p>16 circumstance?</p> <p>17 A. Mr. Farmer was acting suspicious.</p> <p>18 Officer Lopera tried to approach him. Mr. Farmer</p> <p>19 turned and fled out over a -- I don't know what it</p> <p>20 was, some kind of a barrier or something, through</p> <p>21 some doors, into the underneath part of the</p> <p>22 casino.</p> <p>23 Q. Were you aware that there's testimony</p> <p>24 that Mr. Farmer was sweating profusely?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. Were you aware that there was testimony</p> <p>2 that it appeared that maybe he was under the</p> <p>3 influence of drugs or alcohol?</p> <p>4 A. I was aware that that was what some</p> <p>5 people said. It was very difficult to say that it</p> <p>6 was true or not.</p> <p>7 Q. Were you aware that Mr. Farmer allegedly</p> <p>8 said that he had been chased by someone across the</p> <p>9 Strip?</p> <p>10 A. Yes.</p> <p>11 Q. And were you aware that the place in</p> <p>12 which Mr. Farmer ran was off limits to casino</p> <p>13 customers?</p> <p>14 A. Yes.</p> <p>15 Q. And all those facts, do you believe that</p> <p>16 there was reasonable suspicion to pursue</p> <p>17 Mr. Farmer?</p> <p>18 A. I -- yes, there's reasonable suspicion</p> <p>19 to -- to pursue him, to find out what he was</p> <p>20 doing, to make sure he was okay. I didn't have a</p> <p>21 problem with that.</p> <p>22 Q. And are you aware that after the two</p> <p>23 individuals got outside, that there was also</p> <p>24 testimony that there was a belief that Mr. Farmer</p> <p>25 intended to carjack a vehicle?</p>

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<p style="text-align: right;">Page 62</p> <p>1 A. That was part of what was stated by 2 Officer Lopera; however, I didn't think that that 3 was accurate. 4 Q. Based on what? 5 A. The video. 6 Q. What specific video? 7 A. The video that showed the truck that 8 Officer -- I mean Mr. Farmer approached, that 9 Officer Lopera said he thought he was going to 10 carjack someone from the truck. It didn't appear 11 like that was what was happening to me. 12 Q. Was that the body cam video from 13 Officer Lopera, or was that the Venetian 14 looking-down camera? 15 A. I can't -- I can't remember since I saw 16 both videos. 17 Q. Would Mr. -- would Officer Lopera's 18 perception of those fast-moving events be better 19 than yours? 20 A. Well, Officer Lopera's perception is his 21 perception. I'm obviously looking at it just from 22 the video, with not being involved in a foot 23 pursuit or anything else. So that's my opinion 24 based on what I saw on the video. 25 Q. When -- and you watched -- is it correct</p>	<p style="text-align: right;">Page 63</p> <p>1 that you've seen both videos, though? 2 A. Yes. 3 Q. Excuse me, the body cam video and the 4 Venetian video? 5 A. Yes. 6 Q. Can you tell -- I know you're not the 7 person most knowledgeable on this, but can you 8 tell whether Mr. Ken Lopera employed an LVNR 1, 2, 9 or 3? 10 A. I can't tell. 11 Q. Can you tell for certain whether it was 12 an LVNR or a rear naked choke? 13 A. Well, it certainly looked like it wasn't 14 a properly applied LVNR. Now, that might be just 15 from the suspect moving. In other words, someone 16 moves their neck, it's going to change whether 17 you're in a properly applied LVNR. 18 Q. Because it's difficult, when someone is 19 resisting, to put any restraint on them? 20 A. That's correct. 21 Q. Can you tell by any information that 22 you've seen, whether it was video or other things, 23 how long Officer Lopera actually compressed 24 Mr. Farmer? 25 A. It was very difficult to say he did it</p>
<p style="text-align: right;">Page 64</p> <p>1 for this many seconds because you can't tell how 2 good it was applied. 3 Q. From video? 4 A. From video. 5 Q. Is there -- do you have any knowledge 6 that Officer Lopera did not release the hold when 7 it was necessary or when it was reasonable to 8 release the hold? 9 A. I'm sorry. Can you -- 10 Q. So -- and by the way, when I say 11 "release the hold," what I mean is release the 12 pressure on the neck as opposed to take all of his 13 hands off of Mr. Farmer. 14 Do you have any information or facts 15 regarding the idea that Mr. Lopera did not release 16 the hold when it was reasonable to do so? 17 A. Well, so it's difficult to say when he 18 should have released the hold because only he can 19 say how much pressure he had applied. The video 20 doesn't really explain that to you. However, we 21 know he applied a certain amount of pressure 22 because Mr. Farmer went unconscious. 23 So somewhere in between there, you know, 24 I can't tell, you know, how much pressure was 25 applied or when he should have stopped.</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Of course, you don't know whether 2 Mr. Farmer went unconscious because of the hold or 3 something else? 4 A. I don't know why he went unconscious. 5 But if you watch the video, it appears like he's 6 unconscious at some point. 7 Q. Do you believe that Mr. -- I'm sorry. 8 A. At some point, it appears he's 9 unconscious. 10 Q. Do you believe that Mr. Farmer, based 11 upon the video, was actively resisting your 12 officers? 13 A. At -- at some point, he was actively 14 resisting; however, he had a difficult time 15 complying with some of the orders because I don't 16 think they were -- he was given enough time to 17 comply. 18 Q. Do you know how many officers it took to 19 ultimately handcuff Mr. Farmer? 20 A. I want to say three, but it could have 21 been four. 22 Q. It was four. 23 MR. SAYRE: That's not a fact. 24 BY MR. McNUTT: 25 Q. Does it typically take four officers to</p>

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<p style="text-align: right;">Page 66</p> <p>1 restrain someone if they aren't aggressively 2 resisting? 3 A. The more resistance a person -- it's 4 based on size. There's a lot of factors. But if 5 someone takes four officers to be put into 6 handcuffs, then they have to be resisting. 7 MR. McNUTT: I have no other questions. 8 MR. ANDERSON: No questions. 9 CONTINUED EXAMINATION 10 BY MR. SAYRE: 11 Q. What is the definition in the 12 Metropolitan Police Department of what is "active 13 resistance"? 14 A. I don't -- I don't recall the exact 15 definition. I mean -- 16 Q. Well, is active resistance "the 17 subject's verbal or physical actions are intended 18 to prevent an officer from placing the subject in 19 custody and taking control, but are not directed 20 at harming the officer"? Let me show you the 21 document. This is 1132. 22 A. So, I'm sorry, what did you ask me? 23 Q. Okay. Active resistance means that he's 24 not -- there's no evidence he's intending to harm 25 the officer?</p>	<p style="text-align: right;">Page 67</p> <p>1 A. Right. 2 Q. Right. 3 A. Aggressive resistance. 4 Q. And that can include breaking the 5 officer's grip? 6 A. Not wanting to be handcuffed, we 7 usually -- 8 Q. Right. Aggressive resistance is on the 9 next page. 10 A. Right. 11 Q. And that's 1133. "The subject displays 12 the intent to harm the officer, themselves, or 13 another person, and prevent an officer from 14 placing the subject in custody and taking control. 15 The aggression may manifest itself through a 16 subject taking a fighting stance, punching, 17 kicking, striking, attacks with weapons or other 18 actions which present an imminent threat of 19 physical harm to the officer or another." 20 You didn't see any evidence of 21 aggressive resistance by Mr. Farmer? 22 A. I didn't -- I don't recall seeing that 23 on the video. 24 Q. And lateral vascular neck restraint is 25 something that should be applied only for</p>
<p style="text-align: right;">Page 68</p> <p>1 aggressive resistance; correct? 2 A. That's the policy now. 3 Q. Okay. And was it then? 4 A. Well, I believe you could have used it 5 at a low level, but I don't recall what level it 6 was. 7 Q. All right. Can you -- could you have -- 8 A. Restraint and control, I believe. 9 Q. All right. Could you use it sufficient 10 to cause somebody to go unconscious, where someone 11 is simply actively resisting by breaking holds? 12 A. You shouldn't. 13 Q. Right. Shouldn't have done that? 14 A. Shouldn't have. 15 MR. SAYRE: All right. I have nothing 16 further. 17 MR. ANDERSON: Nothing further. 18 THE VIDEOGRAPHER: This concludes 19 today's deposition of John McGrath. The number of 20 media used was one, and we are off the record at 21 2:18 p.m. 22 (Whereupon, the deposition concluded 23 at 2:18 p.m.) 24 25</p>	<p style="text-align: right;">Page 69</p> <p>1 CERTIFICATE OF DEPONENT 2 PAGE LINE CHANGE REASON 3 _____ 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 * * * * * 14 I, CHIEF JOHN MCGRATH, deponent herein, do hereby certify and declare the within and 15 foregoing transcription to be my deposition in said action; that I have read, corrected, and do hereby 16 affix my signature to said deposition under penalty of perjury. 17 _____ 18 CHIEF JOHN MCGRATH, Deponent 19 20 21 22 23 24 25</p>

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1 CERTIFICATE OF COURT REPORTER

2

STATE OF NEVADA)

3

) ss:

COUNTY OF CLARK)

4

5 I, Kimberly A. Farkas, Certified Court
 6 Reporter licensed by the State of Nevada, do
 7 hereby certify that I reported the deposition of
 8 CHIEF JOHN MCGRATH, commencing on December 27,
 9 2017, at 1:01 p.m.

10 Prior to being deposed, the witness was duly
 11 sworn by me to testify to the truth. I thereafter
 12 transcribed my said stenographic notes, and that
 13 the transcript is a complete, true, and accurate
 14 transcription, and that a request was made for a
 15 review of the transcript.

16 I further certify that I am not a relative,
 17 employee, or independent contractor of counsel,
 18 nor a person financially interested in the
 19 proceeding.

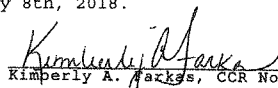
20 IN WITNESS WHEREOF, I have set my hand in my
 21 office in the County of Clark, State of Nevada,
 22 this January 8th, 2018.

23

24

25

26


 Kimberly A. Farkas, CCR No. 741